IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1787 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHEDA SHAMLA MANSI - Applicant(s)

Versus

PRABHATSANG KANUBHA JADEJA &2 - Opponent(s)

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Appearance :

MR YS MANKAD for Petitioner No(s).: 1.

MR VG Dave for MR YOGESH S LAKHANI for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2,3.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 11/07/2005

ORAL JUDGMENT

1. By filing this petition under Section 115 of the Code of Civil Procedure, the petitioner seeks to challenge the order dated 2.9.1999 recorded below applications Ex.15 and 19 in Civil Execution Application No.6 of 1998 by the learned Civil Judge (J.D.)., Mundra, District Kachchh, by which the applications filed by the petitioner/judgment Debtor No.2 (Guarantor) seeking the relief to issue direction to the judgment creditor that he should first proceed for the recovery of the decretal amount by filing execution petition against the Principal debtor and thereafter to proceed against the petitioner, came to be rejected.
2. Having heard Mr. Y.S. Mankad, learned advocate for the petitioner at length and Mr. V.G. Dave, learned advocate for Mr. Y.S. Lakhani, learned advocate for respondent No.1 and having perused the impugned order dated 2.9.1999 recorded below applications Ex.15 and 19 in Civil Execution Application No.6 of 1998 by the learned Civil Judge (J.D.)., Mundra, District Kachchh, it is seen that the present petitioner is the judgment debtor No.2 (Guarantor) and the respondent No.1 is the judgment creditor/decree holder and rest of the respondents are original judgment debtors. A Civil Suit No.47 of 1993 came to be filed in the Court of learned Civil Judge (J.D.)., Mundra, District Kachchh by respondent No.1 against respondent Nos.2 and 3, the Principal Borrower and the petitioner – guarantor to recover Rs.35,000/- with interest at the rate of 9% per annum which is the outstanding dues of respondent No.1. The said suit came to be decreed vide judgment and decree dated 31.12.1997 in favour of respondent No.1 by holding that the principal borrower as well as the guarantor both are jointly and severally liable to pay the outstanding amount of respondent No.1/judgment creditor.
3. Respondent No.1/judgment creditor after getting the decree in his favour, has filed execution proceedings being Civil Execution Application No.6 of 1998 against respondent No.1 and 2/principal borrowers as well as the petitioner/guarantor. In the said execution proceedings, the petitioner filed applications Ex.15 and 19 and prayed for the reliefs to which reference is made earlier. The learned trial Judge, after hearing the parties, rejected the applications against which this revision application is filed.
4. According to this court, since respondent Nos.2 and 3, Principal debtors as well as the petitioner/ guarantor were held jointly and severally liable to pay the outstanding amount of respondent No.1, original judgment creditor, the liability of the judgment debtors and guarantor are co-extensive and therefore it is for the judgment creditor to choose against whom he wants to file execution proceedings. The judgment creditor can select either the judgment debtor or the guarantor for recovery of his dues. In the instant case the judgment debtor has selected the guarantor for recovery of the said amount due to him. Therefore, according to this Court, the learned trial Judge has very rightly rejected the applications ex.15 and 19 filed by the petitioner.
5. This Court finds itself in complete agreement with the impugned order as according to this court no order conclusion was possible except the one reached by the learned trial Judge.
6. Seen in the above context, the petition lacks merit and deserves to be rejected.
7. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted at the time of issuance of rule shall stand vacated.

(A.M. Kapadia, J.)

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